

Melissa Flores, Esq. In-House Counsel ActBlue 366 Summer Street Somerville, MA 02144

MAR 2.0 2018

RE: MUR 7131

ActBlue and Erin Hill in her official capacity as treasurer

Dear Ms. Flores:

On September 1, 2016, the Federal Election Commission notified ActBlue and Erin Hill in her official capacity as treasurer ("ActBlue") of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On October 20, 2016, the Commission notified ActBlue of a supplemental complaint in this matter. Copies of the complaint and supplemental complaint were provided to ActBlue at that time. Upon further review of the allegations contained in the complaint and supplemental complaint, and information supplied by ActBlue, the Commission, on March 6, 2018, voted to dismiss the allegation that ActBlue violated 11 C.F.R. § 110.6(c)(1)(iv). Accordingly, the Commission closed its file in this matter. The Commission cautions ActBlue regarding its compliance with the regulations concerning the reporting of earmarked contributions by conduits and intermediaries.

Documents related to this case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters. 81 Fed. Reg. 50,702 (August 2, 2016). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

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If you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Mark Allen

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**Assistant General Counsel** 

- Enclosure Factual and Legal Analysis

# FEDERAL ELECTION COMMISSION

#### **FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: ActBlue and Erin Hill in her official capacity as treasurer

MUR 7131

### I. INTRODUCTION

The Complainant in the matter alleges that ActBlue may not be forwarding accurate employment information on contributions thorough which it serves as an intermediary.

ActBlue denies the reporting allegation. For the reasons below, the Commission dismisses with caution the allegation that ActBlue failed to accurately report occupation and employer information on a contribution.

### II. FACTUAL AND LEGAL ANALYSIS

# A. Factual Background

Representative Carol Shea-Porter was a candidate for reelection in the First

Congressional District of New Hampshire in 2014, and Carol Shea-Porter for Congress is her principal campaign committee. During the 2014 election cycle, Susan Mayer was a part-time staffer in Shea-Porter's congressional district office in New Hampshire and volunteered part-time on her re-election campaign. Senior Votes Count ("SVC") is a non-connected committee that disclosed the receipt of a \$3,110 contribution from Mayer on October 29, 2014, which was transmitted to SVC through ActBlue. SVC disclosed Mayer's occupation and employer as

Representative Shea-Porter lost her reelection bid on November 4, 2014. She ran again in 2016 for the same Congressional seat, and was elected on November 8, 2016.

See <u>http://congressional-staff.insidegov.com/.</u>

<sup>&</sup>lt;sup>3</sup> SVC 2014 Post-General Election Report at 6 (Dec. 4, 2014). ActBlue is a non-connected committee that acts as an intermediary for individual contributions made on its website to Democratic candidates and to political committees. ActBlue Resp. at 1.

"Not-Employed" and "N/A," respectively. ActBlue, however, disclosed Mayer's occupation and employer as "Congressional Staffer" and "U.S. House of Representatives," respectively.

# B. Legal Analysis

The Federal Election Campaign Act of 1971, as amended (the "Act") requires political committees to identify each person (other than a political committee) who makes a contribution to the committee, whose contribution or contributions in the aggregate exceed \$200 within the calendar year (or election cycle in the case of an authorized committee), together with the date and amount of any such contribution.<sup>6</sup> The identification of the contributor includes reporting the contributor's name, mailing address, occupation, and name of his or employer, if any.<sup>7</sup>

The intermediary or conduit of an earmarked contribution shall report the original source and the recipient candidate or authorized committee to the Commission and to the recipient candidate or authorized committee. The report by the conduit or intermediary shall contain the name and mailing address of each contributor, and for each earmarked contribution in excess of \$200, the contributor's occupation and name of his or her employer. 9

Complainant questions whether ActBlue forwards accurate employer and occupation information for earmarked contributions passed through it.<sup>10</sup> ActBlue asserts that on its contribution form, Mayer reported her employment status as "unemployed," and it forwarded that

SVC 2014 Post-General Election Report at 6.

<sup>&</sup>lt;sup>5</sup> ActBlue 2014 Post-General Election Report at 329,743 (Dec. 4, 2014).

See 52 U.S.C. § 30104(b)(3)(A).

<sup>&</sup>lt;sup>7</sup> See 52 U.S.C. § 30101(13). See also 11 C.F.R. § 104.8(a).

<sup>&</sup>lt;sup>8</sup> See 11 C.F.R. § 110.6(c).

<sup>&</sup>lt;sup>9</sup> 11 C.F.R. § 110.6(c)(1)(iv)(A).

<sup>10</sup> Compl. at 25.

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information to SVC.<sup>11</sup> ActBlue's response, however, conflicts with its disclosure report, which disclosed Mayer's occupation and employer information as "Congressional staffer" and "U.S. House of Representatives," respectively.<sup>12</sup>

While it appears that SVC reported the contributor information that ActBlue provided, that information was incorrect. Nevertheless, the Commission exercised its prosecutorial discretion and dismisses the allegation that Act Blue violated 11 C.F.R. § 110.6(c)(1)(iv) because ActBlue accurately reported Mayer's occupation and employer information on its own reports, and the incorrect disclosure relates to one contributor who gave less than the statutory limit. <sup>13</sup> The Commission also cautions ActBlue about its reporting obligations. <sup>14</sup>

<sup>&</sup>lt;sup>11</sup> *Id*.

ActBlue 2014 Post-General Election Report at 329,743 (Dec. 4, 2014).

<sup>&</sup>lt;sup>13</sup> See Heckler v. Chaney, 470 U.S. 821 (1985).

See 11 C.F.R. § 110.6(c)(1)(iv)(A) (conduit or intermediary reporting contributor information to recipient committee); 11 C.F.R. § 104.7(b)(4) and 58 Fed. Reg. 57,725, 57,728 (Mar. 3, 1994) (Explanation and Justification) (if a committee receives contributor information after the contribution has been reported, it should either file an amended memo Schedule A with its next scheduled report, listing the contribution for which additional information was received including occupation and employer information, or file on or before the next scheduled report, amendments to the original reports on which the contributions were originally reported).